

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYIESE MONET COLE,
JOHNATHAN DI'ANTE COLE, TAMERA
MERCEDES COLE, and DAQUAN MARCELL
COLE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TANYA MONIQUE COLE,

Respondent-Appellant,

and

WILLIAM PHILIP MOLBROUGH, RODERICK
RODES, and CURTIS RIDELL JOHNSON,

Respondents.

UNPUBLISHED

August 24, 2004

No. 249681
Wayne Circuit Court
Family Division
LC No. 79-216831

Before: Neff, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Respondent Tanya M. Cole appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (c)(i) and (g). We affirm.

Respondent argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. She additionally argues that termination of her parental rights was clearly contrary to the children's best interests. We disagree.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set

aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller*, *supra* at 337.

Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5); MCR 3.977(F)(1)(b) and (G)(3). That determination is made upon the evidence on the whole record, and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356-357; 612 NW2d 407 (2000).

We agree that termination was not proper under §§ 19b(3)(b)(ii) and (b)(iii). Although there was evidence that two of respondent's children were sexually abused by Curtis Johnson, there was no evidence concerning the circumstances surrounding the sexual abuse. The evidence did not support a finding that respondent had an opportunity to prevent the sexual abuse and failed to do so, a necessary element of § 19b(3)(b)(ii).

Additionally, with regard to § 19b(3)(b)(iii), the statutory language clearly and unambiguously requires that the danger of subsequent abuse stem from the same nonparent adult who committed the original abuse. In this case, while there was clear and convincing evidence that two of respondent's daughters were sexually abused by Curtis Johnson, a nonparent adult, the evidence indicated that respondent had discontinued her relationship with Johnson. Therefore, the trial court's conclusion "that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult . . . if placed in the parent's home," § 19b(3)(b)(iii), is not supported by clear and convincing evidence.

Nonetheless, the trial court did not clearly err in finding that §§ 19b(3)(c)(i) and (g) were each established by clear and convincing evidence.

Regarding § 19b(3)(c)(i), the condition that led to adjudication was the sexual abuse of two of respondent's daughters. Although respondent discontinued her relationship with the alleged abuser, the evidence established that respondent's oldest son was also convicted of second-degree criminal sexual conduct, and that respondent permitted him to reside in her home, thereby recreating a situation where the children may again be sexually abused. Additionally, respondent was a victim of sexual abuse herself as a child and failed to develop sufficient insight into the children's need to be protected. The trial court did not clearly err in finding that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the children's ages.

Furthermore, with regard to § 19b(3)(g), the evidence indicated that although respondent's home was physically appropriate, there were three other adults and four other children living there. Moreover, one of the adults was a convicted sex offender, which, coupled with respondent's lack of insight into the children's need to be protected, posed a potential threat of harm to the children. Additionally, respondent never provided proof of any income earned after August 2002, when her unemployment benefits expired, and respondent never attempted to estimate her monthly income from her catering business, much less provide copies of tax returns or customer receipts. The trial court did not clearly err in finding that, without regard to intent,

respondent failed to provide proper care or custody and there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the children's ages.

Finally, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra*.

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Brian K. Zahra